

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

S. C. SUIT NO.1686 OF 1988

Domnic P. Tiksera

..Plaintiff.

Vs.

State of Maharashtra & anr.

..Defendants.

...

Mr. Manish Mistry i/b Mr. M.M. Vashi for the Plaintiff.

Mr. Denzil D'Mello, AGP for the State.

...

CORAM: DR. D.Y. CHANDRACHUD, J.

14th September, 2006.

P.C. :

The Plaintiff has instituted the present suit seeking a declaration in regard to the legality of proceedings for the acquisition of land comprised in City Survey Nos. 37, 38, 39, 24, 49 and 36 admeasuring 32,000 sq. yds. situated at Jogeshwari (West), Mumbai. The notification under Section 4 of the Land Acquisition Act, 1894 was published on 28th April, 1960, the declaration under Section 6 on 3rd February, 1966 and the award was made on 22nd September, 1986. In view of the judgment of the Supreme Court in **State of Mizoram v. Biakchhawna**¹, a suit would not be maintainable to challenge the proceedings in

¹ (1995) 1 SCC 156.

acquisition. The remedy of the Plaintiff was in the matter of seeking an enhancement of compensation to apply for a reference under Section 18. A writ petition filed by the Plaintiff (Writ Petition 823 of 1987) as stated in paragraph 9 of the Plaint had been summarily rejected on 2nd April, 1987. The State Government has averred in paragraph 9 of the written statement that when the appeal came up before the Division Bench, the Plaintiff stated that he desired to file a suit and the Petition was allowed to be withdrawn. In view of the law laid down by the Supreme Court, the remedy of a suit is not available to challenge the proceedings in acquisition under the Land Acquisition Act, 1894. The suit will accordingly have to be dismissed and is accordingly dismissed.